Oregon
John A. Kitzhaber, MD, Governor

Department of Environmental Quality
Headquarters
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY 711

XXX XX, 2013

Dennis McLerran
Regional Administrator
U.S. EPA Region 10
1200 Sixth Avenue
Seattle WA 98101

Dear Mr. McLerran,

On May 13, 2013, EPA promulgated amendments to the federal plan requirements that implement the emission guidelines for hospital, medical, and infectious waste incinerators constructed on or before Dec. 1, 2008 (40 CFR part 62 subpart HHH). Unlike New Source Performance Standards, emission guidelines are not directly enforceable until they are implemented and enforced through either an EPA-approved state plan or a promulgated federal plan.

Oregon DEQ requests that EPA delegate to DEQ authority to implement the federal plan requirements for hospital, medical, and infectious waste incinerators.

The delegation request will meet the following requirements:

- Demonstration of adequate resources
- Demonstration of adequate legal authority
- An inventory of affected units
- Public hearing certification of the delegation request
- An MOA that sets forth the terms of delegation

These requirements are addressed in the attached delegation request.

If you have any questions or require additional information, please contact Jerry Ebersole at (503) 229-6974 or by email at EBERSOLE.Gerald@deq.state.or.us.

Thank you for your attention on this matter.

Sincerely,

Andrew Ginsburg
Division Administrator
Air Quality Division

cc: Heather Valdez, EPA Region X
Paul Koprowski, EPA Region X, Oregon Operations Office
Andrea Curtis, Oregon DEQ

OREGON
REQUEST FOR DELEGATION OF THE FEDERAL PLAN REQUIREMENTS FOR HOSPITAL, MEDICAL, AND INFECTIOUS WASTE INCINERATORS

Air Quality Program Operations Section
Air Quality Division
Oregon Department of Environmental Quality
May 2014

I. Overview

On May 13, 2013, EPA promulgated amendments to the Federal Plan Requirements that implement the Emission Guidelines for hospital/medical/infectious waste incinerators constructed on or before December 1, 2008 (40 CFR part 62 subpart HHH). Unlike New Source Performance Standards, emission guidelines are not directly enforceable until they are implemented and enforced through either an EPA-approved state plan or a promulgated Federal Plan. The Oregon Department of Environmental Quality ("DEQ") requests that EPA delegate to DEQ the authority to implement the Federal Plan Requirements for hospital/medical/infectious waste incinerators, which have been incorporated by reference in OAR 340-230-0415 (see Exhibit A).

II. State Plan Requirements

This plan fulfills each of the following requirements from 40 CFR part 60 subpart B for a state plan submittal:

- A demonstration of adequate resources and legal authority
- An inventory of affected units
- A public hearing certification of the delegation request
- An MOA that sets forth the terms of delegation

III. Demonstration of adequate resources and legal authority

Adequate Resources

There is one source in Oregon subject to the Federal Plan Requirements, Oregon State University College of Veterinary Medicine's Research Animal Isolation Lab in Corvallis (the "OSU Veterinary Lab Incinerator"). The Federal Plan only requires this source to keep records on a calendar quarter basis of the weight of hospital, medical and/or infectious waste combusted as well as the weight of all other fuels and wastes combusted at the co-fired combustor, and submit such records upon request [see 40 CFR 62.14400(b)(2)].

DEQ will implement the recordkeeping requirement through its Air Contaminant Discharge Permit program which is part of Oregon's State Implementation Plan. Oregon State University currently has a Simple Air Contaminant Discharge Permit and is required to pay an annual fee of $3,840. The 2013 legislature authorized a 20% fee increase to ensure adequate funding of DEQ's Air Contaminant Discharge Permit program. The new annual fee of $4,608 will be adequate to cover the cost of implementing the Federal Plan Requirements for this facility.

Oregon State University's permit requires them to annually report:

- The materials combusted during the prior calendar year; and
- Records demonstrating the amount of hospital, medical, and infectious waste combusted, in aggregate, was 10% or less by weight as measured on a calendar quarter basis.

DEQ typically reviews the report annually and inspects Oregon State University once every 5 years to ensure compliance with the permit and therefore the Federal Plan Requirements.

Legal Authority

§60.26(a)(1): *Each plan shall show that the State has legal authority to carry out the plan, including authority to: Adopt emission standards and compliance schedules applicable to designated facilities.*

ORS 468.020 gives the Oregon Environmental Quality Commission ("EQC") the authority to adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the commission.

ORS 468A.025 gives the EQC authority to establish air quality standards including emission standards for the entire state or an area of the state. The standards shall set forth the maximum amount of air pollution permissible in various categories of air contaminants and may differentiate between different areas of the state, different air contaminants and different air contamination sources or classes thereof.

§60.26(a)(2): *Enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief.*

ORS 468.090 requires DEQ to investigate complaints which it has cause to believe that any person is violating any rule or standard adopted by the EQC or any permit issued by DEQ by causing or permitting air pollution or air contamination. If DEQ finds after investigation that such a violation of any rule or standard or of any permit exists, the source is required to eliminate the source or cause of the pollution or contamination which resulted in such violation. In case of failure to remedy the violation, DEQ is required to commence enforcement proceedings.

ORS 468.095 gives DEQ the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of air pollution or air contamination or to ascertain compliance or noncompliance with any rule, standard, order, or permit. It also gives the EQC access to any pertinent records relating to such property, including but not limited to blueprints, operation and maintenance records and logs, operating rules and procedures.

ORS 468.100 gives the EQC authority to institute actions or proceedings for legal or equitable remedies to enforce compliance thereto or to restrain further violations.

ORS 468.110 gives any person adversely affected or aggrieved by any order of the EQC the ability to appeal such order. However, any reviewing court before it may stay an order of the commission is required to give due consideration to the public interest in the continued enforcement of the commission's order.

ORS 468.115 gives DEQ the authority to issue a cease and desist order whenever it appears the air pollution or air contamination is presenting an imminent and substantial endangerment to the health of persons.

ORS 468.120 gives the EQC authority to issue subpoenas, administer oaths, and take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and DEQ.

ORS 468.126 requires advance warning of penalty unless:

- the violation is intentional;
- the violation would not normally occur for five consecutive days;
- the permittee received prior advance warning of any violation of the permit within the 36 months immediately preceding the violation;
- the permittee is subject to the federal operating permit program and violates any adopted rule or standard or permit or order; or
- the requirement to provide such notice would disqualify a state program from federal approval or delegation.

ORS 468.130 requires the EQC to adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation not to exceed $25,000 per day and lists factors the commission is required to consider in imposing a penalty.

ORS 468.135 requires all recovered penalties to be paid into the State Treasury and credited to the General Fund, or if the penalty is recovered by a regional air quality control authority, into the county treasury of the county in which the violation occurred.

ORS 468.140 requires additional civil penalties for each day of violation.

DEQ exercises these enforcement responsibilities under and consistent with the provisions of OAR chapter 340, division 11, "Enforcement Procedures and Civil Penalties."

§60.26(a)(3): *Obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require recordkeeping and to make inspections and conduct tests of designated facilities.*

ORS 468.095 gives DEQ the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of air pollution or air contamination or to ascertain compliance or noncompliance with any rule or standard adopted or order or permit issued.

ORS 468A.055 gives the EQC authority to require any information concerning air contaminant emissions as is necessary to determine whether proposed construction is in accordance with applicable rules or standards.

ORS 468A.070 gives the EQC authority to establish a DEQ program for testing of contamination sources and may perform such testing or may require any person in control of an air contamination source to perform the testing.

OAR 340-214-0110 requires sources to provide information that DEQ reasonably requires for the purpose of regulating stationary sources. Such information includes, but is not limited to, information necessary to: issue a permit and ascertain compliance or noncompliance with the permit terms and conditions; ascertain applicability of any requirement; and ascertain compliance or noncompliance with any applicable requirement.

§60.26(a)(4): *Require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of*

emissions from such facilities; also authority for the State to make such data available to the public as reported and as correlated with applicable emission standards.

ORS 468.095 requires DEQ to make records, reports or information available to the public.

ORS 468A.070 gives the EQC authority to establish a DEQ program for measurement of contamination sources and may perform such sampling or may require any person in control of an air contamination source to perform the sampling.

OAR 340-212-0120 gives DEQ the authority to require owners or operators of a stationary source to determine the type, quantity, quality, and duration of the emissions from any air contamination source. It also gives DEQ the authority to require continuous monitoring of specified air contaminant emissions or parameters and periodic regular reporting of the results of such monitoring.

OAR 340-214-0110 requires sources to provide information that DEQ reasonably requires for the purpose of regulating stationary sources. Such information includes, but is not limited to, information necessary to incorporate monitoring, reporting, and compliance certification requirements into a permit.

OAR 340-214-0114 requires sources to prepare records in the form of a report and submit to DEQ on an annual, semi-annual, or more frequent basis, as requested in writing by DEQ. All reports and certifications submitted to DEQ must accurately reflect the monitoring, recordkeeping and other documentation held or performed by the owner or operator.

§60.25(b): *The provisions of law or regulations which the State determines provide the authorities required by this section shall be specifically identified. Copies of such laws or regulations shall be submitted with the plan unless: They have been approved as portions of a preceding plan submitted under this subpart or as portions of an implementation plan submitted under section 110 of the Act, and The State demonstrates that the laws or regulations are applicable to the designated pollutant(s) for which the plan is submitted.*

The laws and regulations referenced in this plan are provided in Exhibit B.

§60.25(c): *The plan shall show that the legal authorities specified in this section are available to the State at the time of submission of the plan. Legal authority adequate to meet the requirements of 40 paragraphs (a)(3) and (4) of this section may be delegated to the State under section 114 of the Act.*

The above legal authorities are available to the State at the time of submission of the plan.

§60.25(d): *A State governmental agency other than the State air pollution control agency may be assigned responsibility for carrying out a portion of a plan if the plan demonstrates to the Administrator's satisfaction that the State governmental agency has the legal authority necessary to carry out that portion of the plan.*

Not applicable.

§60.26(e): *The State may authorize a local agency to carry out a plan, or portion thereof, within the local agency's jurisdiction if the plan demonstrates to the Administrator's satisfaction that the local agency has the legal authority necessary to implement the plan or portion thereof, and that the*

authorization does not relieve the State of responsibility under the Act for carrying out the plan or portion thereof.

ORS 468A.135 requires local agencies in Oregon to adopt any rule or standard that is at least as strict as any rule or standard adopted by the EQC. This statute also requires local agencies to submit to the EQC for its approval all air quality standards adopted by the local agency prior to enforcing any such standards.

IV. Inventory of affected units

There are two sources burning hospital/medical/infectious waste in Oregon.

Covanta Marion in Brooks Oregon, a municipal waste combustor that also burns hospital, medical, or infectious waste, is exempt from the Emission Guidelines for hospital, medical, and infectious waste incinerators, because it meets the applicability requirements under 40 CFR part 60 subpart Cb [see 40 CFR 60.32e(e)]. EPA informed DEQ that there is no need for state rules or a federal plan for sources such as Covanta who are exempt from the Emission Guidelines without recordkeeping or other requiremnets.

The OSU Veterinary Lab Incinerator is exempt from the Emission Guidelines for hospital, medical, and infectious waste incinerators as a co-fired combustor burning less than or equal to 10% hospital, medical, and infectious waste [see 40 CFR 60.32e(c)].

Source ID	Company	Facility Address	City	State	Zip	Waste Burned
02-2524	Oregon State University College of Veterinary Medicine Research Animal Isolation Lab	Magruder Hall 105	Corvallis	OR	97311	Animal carcasses, animal care and husbandry materials/waste, including 10% or less infectious waste

EPA informed DEQ that state rules or a federal plan is required for sources such as the OSU Veterinary Lab Incinerator which are required to keep records to show they are exempt.

V. A public hearing certification of the delegation request

Public hearings:

Nov. 25, 2013, 5:30 pm
DEQ Headquarters Building
Room EQC A on the 10th Floor
811 SW 6th Ave
Portland, OR, 97204

Those unable to attend hearing in person were invited to participate by conference line at the following locations:

DEQ - Bend Regional Office
Conference Room
475 NE Bellevue Dr., Suite 110
Bend, OR 97701

DEQ - Medford Regional Office
Conference Room

221 Stewart Ave, Suite 201
Medford, OR 97501

See Exhibit E for certification of public hearing for the delegation request.

DEQ provided 30 day notification of public hearing as follows:

- Published in the following papers:
  - The Oregonian: Oct. 21, 2013
  - Daily Journal of Commerce: Oct. 21, 2013
- Electronic notification (Gov. delivery list)
  - Oct. 21, 2013: 2600+ recipients
- Mailing (potentially affected sources)
  - Oct. 21, 2013: 400+ recipients
- EPA notification
  - Oct. 2, 2013 letter (and public notice package)
- Oregon Bulletin (Oregon Secretary of State): Nov. 1, 2008

See Exhibit D for proof of 30-day notification of the public hearing.

DEQ prepared and will retain, for a minimum of 2 years, a record of the public hearing for inspection by any interested party.

See Exhibit F for public comments and DEQ responses.

Exhibit A

Emission Standards and Compliance Schedules

Hospital, Medical, and Infectious Waste Incineration Units

340-230-0415
Adoption of Federal Plan by Reference

The federal plan for hospital, medical, and infectious waste incineration units constructed on or **b**efore December 1, 2008**, in 40 CFR Part 62 Subpart HHH, is** by this reference adopted and incorporated herein.
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025

Exhibit B

Legal Authority

Oregon Revised Statutes Chapter 468 — Environmental Quality Generally

As Effective October 1, 2013

ENFORCEMENT

468.020 Rules and standards.
(1) In accordance with the applicable provisions of ORS chapter 183, the Environmental Quality Commission shall adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the commission.
(2) Except as provided in ORS 183.335 (5), the commission shall cause a public hearing to be held on any proposed rule or standard prior to its adoption. The hearing may be before the commission, any designated member thereof or any person designated by and acting for the commission. [Formerly 449.173; 1977 c.38 §1]

468.090 Complaint procedure.
(1) In case any written substantiated complaint is filed with the Department of Environmental Quality which it has cause to believe, or in case the department itself has cause to believe, that any person is violating any rule or standard adopted by the Environmental Quality Commission or any permit issued by the department by causing or permitting water pollution or air pollution or air contamination, the department shall cause an investigation thereof to be made. If it finds after such investigation that such a violation of any rule or standard of the commission or of any permit issued by the department exists, it shall by conference, conciliation and persuasion endeavor to eliminate the source or cause of the pollution or contamination which resulted in such violation.
(2) In case of failure to remedy the violation, the department shall commence enforcement proceedings pursuant to the procedures set forth in ORS chapter 183 for a contested case and in ORS 468B.032. [Formerly 449.815; 1999 c.975 §3]

468.095 Investigatory authority; entry on premises; status of records.
(1) The Department of Environmental Quality shall have the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of water pollution or air pollution or air contamination or to ascertain compliance or noncompliance with any rule or standard adopted or order or permit issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B. The Environmental Quality Commission shall also have access to any pertinent records relating to such property, including but not limited to blueprints, operation and maintenance records and logs, operating rules and procedures.
(2) Unless classified by the Director of the Department of Environmental Quality as confidential, any records, reports or information obtained under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B shall be available to the public. Upon a showing satisfactory to the director by any person that records, reports or information, or particular parts thereof, other than emission data, if made public, would divulge a secret process, device or method of manufacturing or production entitled to protection as trade secrets of such person, the director shall classify such record, report or information, or particular part thereof, other than emission data, confidential and such confidential record, report or information, or particular part thereof, other than emission data, shall not be made a part of any public record or used in any public hearing unless it is determined by a circuit court that evidence

thereof is necessary to the determination of an issue or issues being decided at a public hearing. [Formerly 449.169; 1975 c.173 §1]

468.100 Enforcement procedures; powers of regional authorities; status of procedures.
(1) Whenever the Environmental Quality Commission has good cause to believe that any person is engaged or is about to engage in any acts or practices which constitute a violation of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B, or any rule, standard or order adopted or entered pursuant thereto, or of any permit issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B, the commission may institute actions or proceedings for legal or equitable remedies to enforce compliance thereto or to restrain further violations.
(2) The proceedings authorized by subsection (1) of this section may be instituted without the necessity of prior agency notice, hearing and order, or during said agency hearing if it has been initially commenced by the commission.
(3) A regional authority formed under ORS 468A.105 may exercise the same functions as are vested in the commission by this section insofar as such functions relate to air pollution control and are applicable to the conditions and situations of the territory within the regional authority. The regional authority shall carry out these functions in the manner provided for the commission to carry out the same functions.
(4) The provisions of this section are in addition to and not in substitution of any other civil or criminal enforcement provisions available to the commission or a regional authority. The provisions of this section shall not prevent the maintenance of actions for legal or equitable remedies relating to private or public nuisances brought by any other person, or by the state on relation of any person without prior order of the commission. [1973 c.826 §2; 1979 c.284 §153]

468.110 Appeal; power of court to stay enforcement. Any person adversely affected or aggrieved by any order of the Environmental Quality Commission may appeal from such order in accordance with the provisions of ORS chapter 183. However, notwithstanding ORS 183.482 (3), relating to a stay of enforcement of an agency order and the giving of bond or other undertaking related thereto, any reviewing court before it may stay an order of the commission shall give due consideration to the public interest in the continued enforcement of the commission's order, and may take testimony thereon. [Formerly 449.090; 2007 c.71 §148]

468.115 Enforcement in cases of emergency.
(1) Whenever it appears to the Department of Environmental Quality that water pollution or air pollution or air contamination is presenting an imminent and substantial endangerment to the health of persons, at the direction of the Governor the department shall, without the necessity of prior administrative procedures or hearing, enter an order against the person or persons responsible for the pollution or contamination requiring the person or persons to cease and desist from the action causing the pollution or contamination. Such order shall be effective for a period not to exceed 10 days and may be renewed thereafter by order of the Governor.
(2) The state and local police shall cooperate in the enforcement of any order issued pursuant to subsection (1) of this section and shall require no further authority or warrant in executing and enforcing such an order.
(3) If any person fails to comply with an order issued pursuant to subsection (1) of this section, the circuit court in which the source of water pollution or air pollution or air contamination is located shall compel compliance with the order in the same manner as with an order of that court. [Formerly 449.980]

468.120 Public hearings; subpoenas, oaths, depositions.
(1) The Environmental Quality Commission, its members or a person designated by and acting for the commission may:
(a) Conduct public hearings.
(b) Issue subpoenas for the attendance of witnesses and the production of books, records and documents relating to matters before the commission.
(c) Administer oaths.
(d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and Department of Environmental Quality pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.
(2) Subpoenas authorized by this section may be served by any person authorized by the person issuing the subpoena. Witnesses who are subpoenaed shall receive the fees and mileage provided in ORS 44.415 (2). [Formerly 449.048; 1989 c.980 §14b]

468.126 Advance notice.
(1) No civil penalty prescribed under ORS 468.140 shall be imposed for a violation of an air, water or solid waste permit issued by the Department of Environmental Quality until the permittee has received five days' advance warning in writing from the department, specifying the violation and stating that a penalty will be imposed for the violation unless the permittee submits the following to the department in writing within five working days after receipt of the advance warning:
(a) A response certifying that the permitted facility is complying with applicable law;
(b) A proposal to bring the facility into compliance with applicable law that is acceptable to the department and that includes but is not limited to proposed compliance dates; or
(c) For a water quality permit violation, a request in writing to the department that the department follow the procedures prescribed under ORS 468B.032. Notwithstanding the requirement for a response to the department within five working days, the permittee may file a request under this paragraph within 20 days from the date of service of the notice.
(2) No advance notice shall be required under subsection (1) of this section if:
(a) The violation is intentional;
(b) The water or air violation would not normally occur for five consecutive days;
(c) The permittee has received prior advance warning of any violation of the permit within the 36 months immediately preceding the violation;
(d) The permittee is subject to the federal operating permit program under ORS 468A.300 to 468A.320 and violates any rule or standard adopted or permit or order issued under ORS chapter 468A and applicable to the permittee; or
(e) The requirement to provide such notice would disqualify a state program from federal approval or delegation. [1991 c.650 §9 (enacted in lieu of 468.125); 1993 c.790 §3; 1999 c.975 §4]

468.130 Schedule of civil penalties; rules; factors to be considered in imposing civil penalties.
(1) The Environmental Quality Commission shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation. Except as provided in ORS 468.140 (3), no civil penalty shall exceed $25,000 per day. Where the classification involves air pollution, the commission shall consult with the regional air quality control authorities before adopting any classification or schedule.
(2) In imposing a penalty pursuant to the schedule or schedules authorized by this section, the commission and regional air quality control authorities shall consider the following factors:
(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.
(b) Any prior violations of statutes, rules, orders and permits enforceable by the commission or by

regional air quality control authorities.
(c) The economic and financial conditions of the person incurring a penalty.
(d) The gravity and magnitude of the violation.
(e) Whether the violation was repeated or continuous.
(f) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.
(g) The violator's cooperativeness and efforts to correct the violation.
(h) Whether the violator gained an economic benefit as a result of the violation.
(i) Any relevant rule of the commission.
(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the commission or regional authority considers proper and consistent with the public health and safety.
(4) The commission may by rule delegate to the Department of Environmental Quality, upon such conditions as deemed necessary, all or part of the authority of the commission provided in subsection (3) of this section to remit or mitigate civil penalties. [Formerly 449.970; 1977 c.317 §3; 1987 c.266 §2; 1991 c.650 §4; 2009 c.267 §8]

468.135 Imposition of civil penalties.
(1) Any civil penalty under ORS 468.140 shall be imposed in the manner provided in ORS 183.745.
(2) All penalties recovered under ORS 468.140 shall be paid into the State Treasury and credited to the General Fund, or in the event the penalty is recovered by a regional air quality control authority, it shall be paid into the county treasury of the county in which the violation occurred. [Formerly 449.973; 1989 c.706 §17; 1991 c.650 §6; 1991 c.734 §37]

468.140 Civil penalties for specified violations.
(1) In addition to any other penalty provided by law, any person who violates any of the following shall incur a civil penalty for each day of violation in the amount prescribed by the schedule adopted under ORS 468.130:
(a) The terms or conditions of any permit required or authorized by law and issued by the Department of Environmental Quality or a regional air quality control authority.
(b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapter 467 and ORS chapters 468, 468A and 468B.
(c) Any rule or standard or order of the Environmental Quality Commission adopted or issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapter 467 and ORS chapters 468, 468A and 468B.
(d) Any term or condition of a variance granted by the commission or department pursuant to ORS 467.060.
(e) Any rule or standard or order of a regional authority adopted or issued under authority of ORS 468A.135.
(f) The financial assurance requirement under ORS 468B.390 and 468B.485 or any rule related to the financial assurance requirement under ORS 468B.390.
(2) Each day of violation under subsection (1) of this section constitutes a separate offense.
(3)(a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil or hazardous material into the waters of the state or intentionally or negligently fails to clean up a spill or release of oil or hazardous material into the waters of the state as required by ORS 466.645 shall incur a civil penalty not to exceed the amount of $100,000 for each violation.
(b) In addition to any other penalty provided by law, the following persons shall incur a civil penalty not to exceed the amount of $25,000 for each day of violation:
(A) Any person who violates the terms or conditions of a permit authorizing waste discharge into the

air or waters of the state.
(B) Any person who violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapters 468, 468A and 468B relating to air or water pollution.
(C) Any person who violates the provisions of a rule adopted or an order issued under ORS 459A.590.
(4) In addition to any other penalty provided by law, any person who violates the provisions of ORS 468B.130 shall incur a civil penalty not to exceed the amount of $1,000 for each day of violation.
(5) Subsection (1)(c) and (e) of this section does not apply to violations of motor vehicle emission standards which are not violations of standards for control of noise emissions.
(6) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided by law, any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS 468A.555 to 468A.620 and 468A.992, 476.380 and 478.960 shall be assessed by the department a civil penalty of at least $20 but not more than $40 for each acre so burned. Any amounts collected by the department pursuant to this subsection shall be deposited with the State Treasurer to the credit of the General Fund and shall be available for general governmental expense. As used in this subsection, "open field burning" does not include propane flaming of mint stubble.
[Formerly 449.993; 1975 c.559 §14; 1977 c.511 §5; 1979 c.353 §1; 1987 c.513 §1; 1989 c.268 §4; 1989 c.1042 §7; 1991 c.764 §6; 1997 c.473 §1; 2001 c.688 §7; 2009 c.267 §9; 2011 c.597 §209]

ORS Chapter 468A — Air Quality

2013 EDITION

468A.025 Air purity standards; air quality standards; treatment and control of emissions; rules.

(1) By rule the Environmental Quality Commission may establish areas of the state and prescribe the degree of air pollution or air contamination that may be permitted therein, as air purity standards for such areas.
(2) In determining air purity standards, the commission shall consider the following factors:
(a) The quality or characteristics of air contaminants or the duration of their presence in the atmosphere which may cause air pollution in the particular area of the state;
(b) Existing physical conditions and topography;
(c) Prevailing wind directions and velocities;
(d) Temperatures and temperature inversion periods, humidity, and other atmospheric conditions;
(e) Possible chemical reactions between air contaminants or between such air contaminants and air gases, moisture or sunlight;
(f) The predominant character of development of the area of the state, such as residential, highly developed industrial area, commercial or other characteristics;
(g) Availability of air-cleaning devices;
(h) Economic feasibility of air-cleaning devices;
(i) Effect on normal human health of particular air contaminants;
(j) Effect on efficiency of industrial operation resulting from use of air-cleaning devices;
(k) Extent of danger to property in the area reasonably to be expected from any particular air contaminants;
(l) Interference with reasonable enjoyment of life by persons in the area which can reasonably be expected to be affected by the air contaminants;
(m) The volume of air contaminants emitted from a particular class of air contamination source;
(n) The economic and industrial development of the state and continuance of public enjoyment of the state's natural resources; and

(o) Other factors which the commission may find applicable.
(3) The commission may establish air quality standards including emission standards for the entire state or an area of the state. The standards shall set forth the maximum amount of air pollution permissible in various categories of air contaminants and may differentiate between different areas of the state, different air contaminants and different air contamination sources or classes thereof.
(4) The commission shall specifically fulfill the intent of the policy under ORS 468A.010 (1)(a) as it pertains to the highest and best practicable treatment and control of emissions from stationary sources through the adoption of rules:
(a) To require specific permit conditions for the operation and maintenance of pollution control equipment to the extent the Department of Environmental Quality considers the permit conditions necessary to insure that pollution control equipment is operated and maintained at the highest reasonable efficiency and effectiveness level.
(b) To require typically achievable control technology for new, modified and existing sources of air contaminants or precursors to air contaminants for which ambient air quality standards are established, to the extent emission units at the source are not subject to other emission standards for a particular air contaminant and to the extent the department determines additional controls on such sources are necessary to carry out the policy under ORS 468A.010 (1)(a).
(c) To require controls necessary to achieve ambient air quality standards or prevent significant impairment of visibility in areas designated by the commission for any source that is a substantial cause of any exceedance or projected exceedance in the near future of national ambient air quality standards or visibility requirements.
(d) To require controls necessary to meet applicable federal requirements for any source.
(e) Applicable to a source category, contaminant or geographic area necessary to protect public health or welfare for air contaminants not otherwise regulated by the commission or as necessary to address the cumulative impact of sources on air quality.
(5) Rules adopted by the commission under subsection (4) of this section shall be applied to a specific stationary source only through express incorporation as a permit condition in the permit for the source.
(6) Nothing in subsection (4) of this section or rules adopted under subsection (4) of this section shall be construed to limit the authority of the commission to adopt rules, except rules addressing the highest and best practicable treatment and control.
(7) As used in this section, "typically achievable control technology" means the emission limit established on a case-by-case basis for a criterion contaminant from a particular emission unit in accordance with rules adopted under subsection (4) of this section. For an existing source, the emission limit established shall be typical of the emission level achieved by emission units similar in type and size. For a new or modified source, the emission limit established shall be typical of the emission level achieved by recently installed, well controlled new or modified emission units similar in type and size. Typically achievable control technology determinations shall be based on information known to the department. In making the determination, the department shall take into consideration pollution prevention, impacts on other environmental media, energy impacts, capital and operating costs, cost effectiveness and the age and remaining economic life of existing emission control equipment. The department may consider emission control technologies typically applied to other types of emission units if such technologies can be readily applied to the emission unit. If an emission limitation is not feasible, the department may require a design, equipment, work practice or operational standard or a combination thereof. [Formerly 449.785 and then 468.295; 1993 c.790 §1]

468A.055 Notice prior to construction of new sources; order authorizing or prohibiting construction; effect of no order; appeal.
(1) The Environmental Quality Commission may require notice prior to the construction of new air contamination sources specified by class or classes in its rules or standards relating to air pollution.

(2) Within 30 days of receipt of such notice, the commission may require, as a condition precedent to approval of the construction, the submission of plans and specifications. After examination thereof, the commission may request corrections and revisions to the plans and specifications. The commission may also require any other information concerning air contaminant emissions as is necessary to determine whether the proposed construction is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto.
(3) If the commission determines that the proposed construction is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto, it shall enter an order approving such construction. If the commission determines that the construction does not comply with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto, it shall notify the applicant and enter an order prohibiting the construction.
(4) If within 60 days of the receipt of plans, specifications or any subsequently requested revisions or corrections to the plans and specifications or any other information required pursuant to this section, the commission fails to issue an order, the failure shall be considered a determination that the construction may proceed except where prohibited by federal law. The construction must comply with the plans, specifications and any corrections or revisions thereto or other information, if any, previously submitted.
(5) Any person against whom the order is directed may, within 20 days from the date of mailing of the order, demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the Director of the Department of Environmental Quality. The hearing shall be conducted pursuant to the applicable provisions of ORS chapter 183.
(6) The commission may delegate its duties under subsections (2) to (4) of this section to the Director of the Department of Environmental Quality. If the commission delegates its duties under this section, any person against whom an order of the director is directed may demand a hearing before the commission as provided in subsection (5) of this section.
(7) For the purposes of this section, "construction" includes installation and establishment of new air contamination sources. Addition to or enlargement or replacement of an air contamination source, or any major alteration or modification therein that significantly affects the emission of air contaminants shall be considered as construction of a new air contamination source. [Formerly 468.325; 1993 c.790 §4]

468A.070 Measurement and testing of contamination sources; rules.
(1) Pursuant to rules adopted by the Environmental Quality Commission, the Department of Environmental Quality shall establish a program for measurement and testing of contamination sources and may perform such sampling or testing or may require any person in control of an air contamination source to perform the sampling or testing, subject to the provisions of subsections (2) to (4) of this section. Whenever samples of air or air contaminants are taken by the department for analysis, a duplicate of the analytical report shall be furnished promptly to the person owning or operating the air contamination source.
(2) The department may require any person in control of an air contamination source to provide necessary holes in stacks or ducts and proper sampling and testing facilities, as may be necessary and reasonable for the accurate determination of the nature, extent, quantity and degree of air contaminants which are emitted as the result of operation of the source.
(3) All sampling and testing shall be conducted in accordance with methods used by the department or equivalent methods of measurement acceptable to the department.
(4) All sampling and testing performed under this section shall be conducted in accordance with

applicable safety rules and procedures established by law. [Formerly 449.702 and then 468.340]

OREGON ADMINISTRATIVE RULES

CHAPTER 340

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 11

RULES OF GENERAL APPLICABILITYAND ORGANIZATION

Confidentiality and Inadmissibility of Mediation Communications

340-011-0003
Confidentiality and Inadmissibility of Mediation Communications
(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.
(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in 192.410 to 192.505.
(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.
(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.
(5) **Mediations Excluded**. Sections (6)-(10) of this rule do not apply to:
(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or
(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;
(c) Mediation in which the only parties are public bodies;
(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or
(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.
(6) **Disclosures by Mediator**. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:
(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or
(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) - (d), (j) - (l) or (o) - (p) of section (9) of this rule.
(7) **Confidentiality and Inadmissibility of Mediation Communications**. Except as provided in sections (8) - (9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part

of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.
(8) **Written Agreement**. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]
(9) **Exceptions to confidentiality and inadmissibility**.
(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.
(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.
(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.
(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.
(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.
(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.
(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.
(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.
(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.
(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:
(A) A request for mediation; or
(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or
(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or
(D) A strike notice submitted to the Employment Relations Board.
(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.
(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:
(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or
(B) Attorney work product prepared in anticipation of litigation or for trial; or
(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency, or
(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or
(E) Settlement concepts or proposals, shared with the mediator or other parties.
(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Agency Director determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.
(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under 17.095 or state or federal law requires the terms to be confidential.
(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).
(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.
[ED. NOTE: The Form referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 36.224
Stats. Implemented: ORS 36.224, ORS 36.228, ORS 36.230 & ORS 36.232
Hist.: DEQ 18-2000, f. & cert. ef. 12-11-00

340-011-0004
Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.
(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.
(3) Nothing in this rule affects any confidentiality created by other law.
(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.
(5) **Disclosures by Mediator**. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:
(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or
(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h) - (j) of section (7) of this rule.
(6) **Confidentiality and Inadmissibility of Mediation Communications**. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:
(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and
(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:
(A) Is neither a party to the dispute nor the mediator; and
(B) Is designated by the agency to authorize confidentiality for the mediation; and
(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.
(7) **Exceptions to confidentiality and inadmissibility**.
(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.
(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.
(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any

person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.
(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.
(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.
(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.
(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.
(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.
(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.
(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).
(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of $1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.
(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.
Stat. Auth.: ORS 36.224
Stats. Implemented: ORS 36.230(4)
Hist.: DEQ 18-2000, f. & cert. ef. 12-11-00

Rules of Practice and Procedure

340-011-0005
Definitions

Unless otherwise defined in this division, the words and phrases used in this division have the same meaning given them in ORS 183.310, the rules of the Office of Administrative Hearings, the Model Rules or other divisions in Oregon Administrative Rules, Chapter 340, as context requires.
(1) "Commission" means the Environmental Quality Commission.
(2) "Department" means the Department of Environmental Quality.
(3) "Director" means the director of the department or the director's authorized delegates.
(4) " Rules of the Office of Administrative Hearings" means the Attorney General's Rules, OAR 137-003-0501 through 137-003-0700.
(5) "Model Rules" or "Uniform Rules" means the Attorney General's Uniform and Model Rules of Procedure, OAR chapter 137, division 001 (excluding 137-001-0008 through 137-001-0009), OAR chapter 137, division 003, and OAR chapter 137, division 004, as in effect on January 1, 2006.
(6) "Participant" means the respondent, a person granted either party or limited party status in the contested case under OAR 137-003-0535, an agency participating in the contested case under 137-003-0540, and the department.
(7) "Respondent" means the person to whom a formal enforcement action is issued.
(8) "Formal Enforcement Action" has the same meaning as defined in OAR 340, division 012.
Stat. Auth.: ORS 183.341 & 468.020
Stats. Implemented: ORS 183.341
Hist.: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 25-1979, f. & ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 10-1997, f. & cert. ef. 6-10-97; DEQ 3-1998, f. & cert. ef. 3-9-98; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 10-2002, f. & cert. ef. 10-8-02; DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08

340-011-0009
Incorporation of Attorney General's Uniform and Model Rules
The following Attorney General's Uniform and Model Rules of Procedure are adopted and incorporated into this Division, except as otherwise provided in this Chapter: OAR chapter 137, division 001 (excluding 137-001-0008 through 137-001-0009), OAR chapter 137, division 003, and OAR chapter 137, division 004, as in effect on January 1, 2006.
Stat. Auth.: ORS 468.020, 183.341, 183,452
Stats. Implemented: ORS 468A.020, 468.070, 468.090 - 0140, 183.341, 183.452
Hist.: DEQ 5-2008, f. & cert. ef. 3-20-08

Rulemaking

340-011-0010
Notice of Rulemaking
(1) Notice of intent to adopt, amend, or repeal any rule(s) shall be in compliance with applicable state and federal laws and rules, including ORS Chapter 183, 468A.327 and sections (2) and (3) of this rule.
(2) To the extent required by ORS Chapter 183 or 468A.327, before adopting, amending or repealing any permanent rule, the Department will give notice of the rulemaking:
(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 14 days before a hearing;
(b) By providing a copy of the notice to persons on the Department's mailing lists established pursuant to ORS 183.335(8), to the legislators specified in 183.335(15), and to the persons or association that requested the hearing (if any):
(A) At least 21 days before a hearing granted or otherwise scheduled pursuant to ORS 183.335(3); or
(B) At least 14 days before a hearing before the Commission if granted or otherwise scheduled under OAR 340-011-0029(3);

(c) In addition to the news media on the list referenced in (b), to other news media the Director may deem appropriate.
(3) In addition to meeting the requirements of ORS 183.335(1), the notice provided pursuant to section (1) of this rule shall contain the following:
(a) Where practicable and appropriate, a copy of the rule proposed to be adopted, amended or repealed with changes highlighted;
(b) Where the proposed rule is not set forth verbatim in the notice, a statement of the time, place, and manner in which a copy of the proposed rule may be obtained and a description of the subject and issues involved in sufficient detail to inform a person that the person's interest may be affected;
(c) If a hearing has been granted or scheduled, whether the presiding officer will be the Commission, a member of the Commission, an employee of the Department, or an agent of the Commission;
(d) The manner in which persons not planning to attend the hearing may offer for the record written comments on the proposed rule.
Stat. Auth.: ORS 183 & ORS 468, 468A.327
Stats. Implemented: ORS 183.025 & 183.335
Hist.: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2008, f. & cert. ef. 2-25-08

340-011-0024
Rulemaking Process
The rulemaking process shall be governed by the Attorney General's Model Rules, OAR 137-001-0005 through 137-001-0060. As used in those rules, the terms, "agency," "governing body," and "decision maker" generally should be interpreted to mean "Commission." The term "agency" may also be interpreted to be the "Department" where context requires.
Stat. Auth.: ORS 183 & ORS 468
Stats. Implemented: ORS 183.025 & ORS 183.335
Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88 (and corrected 9-30-88)

340-011-0029
Policy on Disclosure of the Relationship Between Proposed Rules and Federal Requirements
(1) In order to clearly identify the relationship between the proposed adoption, amendment or repeal of rules and applicable federal requirements, and to facilitate consideration and rulemaking by the Environmental Quality Commission, the Department, must:
(a) Prepare a statement of whether the intended action imposes requirements different from, or in addition to, any applicable federal requirements and, if so, a written explanation of:
(A) The public health, environmental, scientific, economic, technological, administrative or other reasons, as appropriate, for differing from or adding to applicable federal requirements; and
(B) Alternatives considered, if any, and the reasons that the alternatives were not pursued.
(b) Include the statement in the notice of intended action pursuant to ORS 183.335(1) and any additional notice given prior to a rulemaking hearing pursuant to OAR 340-011-0010(2).
(c) Include the statement in the final staff report presented to the Commission when rule adoption, amendment or repeal is recommended.
(2) The statement prepared under section (1)(a) of this rule must be based upon information available to the Department at the time the statement is prepared.
(3) An opportunity for an oral hearing before the Commission regarding the statement prepared under section (1)(a) of this rule must be granted, and notice given in accordance with OAR 340-011-0010(2)(b)(B), if:
(a) The rulemaking proposal applies to a source subject to the Oregon Title V Operating Permit Fees under OAR 340 Division 220;

(b) The request for a hearing is received within 14 days after the notice of intended action is issued under ORS 183.335(1), from 10 persons or from an association having no fewer than 10 members;
(c) The request describes how the persons or association that made the request will be directly harmed by the rulemaking proposal; and
(d) The notice of intended action under ORS 183.335(1) does not indicate that an oral hearing will be held before the Commission.
(4) Nothing in this rule applies to temporary rules adopted pursuant to OAR 340-011-0042.
(5) The Commission delegates to the Department the authority to prepare and issue any statement required under ORS 468A.327.
Stat. Auth.: ORS 468.020, ORS 468A.327
Stats. Implemented: ORS 183.025 & 183.335
Hist.: DEQ 28-1994, f. & cert. ef. 11-17-94; DEQ 1-2008, f. & cert. ef. 2-25-08

340-011-0046
Petition to Promulgate, Amend, or Repeal Rule: Contents of Petition, Filing of Petition
The filing of petitions for rulemaking and action thereon by the Commission shall be in accordance with the Attorney General's Uniform Rule of Procedure set forth in OAR 137-001-0070. As used in that rule, the term "agency" generally refers to the Commission but may refer to the Department if context requires.
Stat. Auth.: ORS 183.335 & ORS 468.020
Stats. Implemented: ORS 183.390
Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88

340-011-0052
Temporary Rules
The Commission may adopt temporary rules and file the same, along with supportive findings, pursuant to ORS 183.335(5) and 183.355(2) and the Attorney General's Model rule OAR 137-001-0080.
Stat. Auth.: ORS 183.335 & ORS 468.020
Stats. Implemented: ORS 183.025 & ORS 183.335
Hist.: DEQ 122, f. & ef. 9-13-76; DEQ 7-1988, f. & cert. ef. 5-6-88

340-011-0053
Periodic Rule Review
Periodic review of agency rules shall be accomplished once every three years in accordance with ORS 183.545 and the Attorney General's Model Rule OAR 137-001-0085.
Stat. Auth.: ORS 183.335 & ORS 468.020
Stats. Implemented: ORS 183.540 & ORS 545 &ORS 550
Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88

340-011-0061
Declaratory Ruling: Institution of Proceedings, Consideration of Petition and Disposition of Petition
The declaratory ruling process shall be governed by the Attorney General's Uniform Rules of Procedure, OAR 137-002-0010 through 137-002-0060. As used in those rules, the terms "agency," "governing body, and "decision maker" generally should be interpreted to mean "Commission." The term "agency" may also be interpreted to be the "Department" where context requires.
Stat. Auth.: ORS 183.335 & ORS 468.020
Stats. Implemented: ORS 183.410
Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88

Public Records Access and Reproduction

340-011-0310
Purpose
Increased public involvement and awareness of environmental issues has placed greater demands on viewing and copying Department records. OAR 340-011-0310 et seq. allows the Department to recover its costs for providing these services, as authorized by Oregon statute. Furthermore, these rules serve to ensure that all Department records remain available for viewing and intact for future use.
Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020
Stats. Implemented: ORS 192.410 - ORS 192.440
Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00

340-011-0320
Scope
With some exceptions prescribed by law, every person has the right to inspect public records of a state agency in this state. State agencies are allowed to take reasonable measures to ensure the integrity of records and to maintain office efficiency. The ability of the public to view public records is limited by reasonable restrictions and other such exemptions from disclosure that may be prescribed by law or rule. Statutory guidance for this rule includes: ORS 468.020; ORS 192.410 to 192.505.
Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020
Stats. Implemented: ORS 192.410 - ORS 192.505
Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94

340-011-0330
Requests for Review or to Obtain Copies of Public Records
(1) The right to review records includes the right to review the original record where practicable. It does not provide the right to the requestor to locate the record himself or to review the original record when it contains exempt material.
(2) Request to review or copy public records should be made to, and will be handled by, the appropriate Department staff maintaining the records requested. For questions, contact the Department's general information number listed in the phone book.
(3) Requests for Department records should be as specific as possible, including type of record, subject matter, approximate record date, and relevant names of parties. Whenever possible, the request should include the site location or county of the facility if known. If the request is unclear or overly burdensome, the Department may request further clarification of the request. If the Department cannot identify specific records responsive to a record request, the Department may provide general files or distinct sections of records that are likely to contain the requested records.
(4) Requests to either review or obtain copies of records may be made in writing, by telephone or in-person. The Department may require a request to be made in writing if needed for clarification or specification of the record request.
(a) Each Department office will establish daily hours during which the public may review the Department's records. The hours maintained in each office will be determined by staff and equipment available to accommodate record review and reproduction.
(b) Pursuant to ORS 192.430(1) and this rule, each Department office shall designate and provide a supervised space, if available, for viewing records. This space will accommodate at least one reviewer at a time.

(c) The Department accommodates public records requests from persons with disabilities in accordance with the Americans with Disabilities Act.
(d) The Department's ability to accommodate in-person requests may be limited by staff and equipment availability. Additionally prior to making records available for public review, the Department will ascertain whether the record requested is exempt from public disclosure under ORS chapter 192 and other applicable law.
(5) Time to provide requested records: The Department will respond to a record request as quickly as reasonable. This time frame will vary depending on the volume of records requested, staff availability to respond to the record request, the difficulty in determining whether any of the records are exempt from disclosure, and the necessity of consulting with legal counsel. If the Department determines that it will require more than 30 days to respond to a record request, it will inform the requestor of the estimated time necessary to comply with the record request.
Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020
Stats. Implemented: ORS 192.420 & ORS 192.430
Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00

340-011-0340
Costs for Record Review and Copying
(1) Outside Copying/Loaning Records -- In order to protect the integrity of Department records, no records may be loaned or taken off-premises by a person besides Department staff unless the Department has a contract with the person removing the records.
(2) Hardcopy Records:
(a) Persons Requesting to Make Copies Themselves: Requestors are allowed to use their own equipment to make copies of requested records depending on the facilities available within each Department office. Use of non-Department equipment within a Department office will not be allowed without staff being present. Staff time will be charged at $30.00 per hour. The Department office may determine that use of non-Department equipment will not be allowed based on:
(A) Staff time available to oversee the copying; and
(B) Space limitations for the equipment.
(b) Reimbursement of Department staff time: An hourly rate of $30.00 will be assessed for any staff time greater than 15 minutes spent locating records, reviewing records to delete exempt material, supervising the inspection of records, copying records, certifying records, and mailing records. The Department may charge for the cost of searching for records regardless of whether the Department was able to locate the requested record.
(c) Reimbursement of Department of Justice Attorney General time: If necessary to respond to a record request, an hourly rate of $90.00 will be assessed for any Department of Justice Attorney General time spent reviewing records to delete exempt material.
(d) Copy Charges: The fee schedule listed below is reasonably calculated to reimburse the Department for the actual costs of making records available and providing copies of records. The per-page copy charge includes 15 minutes of staff time for routine file searches.
(A) Department Administrative Rule sets:
(i) Complete set: $35.00;
(ii) Update Service: $115.00 (per annum);
(iii) Individual Divisions: $0.05 (per page).
(B) Hardcopy (black and white, letter or legal size): $0.25 per page. Costs for other sized or color copies will be the Department's actual cost plus staff time.
(C) Additional charges:
(i) Fax charges: $0.50 (per page);
(ii) Document certification: $2.50 (per certificate);
(iii) Invoice processing: $5.00 (per invoice);

(iv) Express Mailing: actual or minimum of $9.00;
(v) Archive Retrieval: actual or minimum of $10.00.
(e) Whenever feasible, the Department will provide double-sided copies of a record request. Each side of a double-sided copy will constitute one page.
(3) Electronic Records:
(a) Copies of requested electronic records may be provided in the format or manner maintained by the Department. The Department will perform all downloading, reproducing, formatting and manipulating of records. Public access to Department computer terminals may be possible as such terminals become available in the future.
(b) Reimbursement of Department staff time: An hourly rate of $40.00 will be assessed for any staff time spent locating records, reviewing records to delete exempt material, supervising the inspection of records, downloading and manipulating records, certifying records and mailing records. The Department may charge for the cost of searching for records regardless of whether the Department was able to locate the requested records.
(c) Reimbursement of Department of Justice Attorney General time: If necessary to respond to a record request, an hourly rate of $90.00 will be assessed for any Department of Justice Attorney General time spent reviewing records to delete exempt material.
(d) Hardcopy printouts (black and white; legal or letter size): $0.25 per page. Costs for other sized or color copies will be the Department's actual cost plus staff time.
(e) Other media (if provided by the Department):
(A) Diskettes: $1.00 each;
(B) 2 hour VHS videocassette: $6.00 each;
(C) Magnetic Audio Tapes: $3.00 each;
(D) Compact Disks: $3.00 each.
(f) Additional charges:
(A) Fax charges: $0.50 (per page);
(B) Document certification: $2.50 (per certificate);
(C) Invoice processing: $5.00 (per invoice);
(D) Express Mailing: actual or minimum of $9.00;
(E) Archive Retrieval: actual or minimum of $10.00.
Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020
Stats. Implemented: ORS 192.440
Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00

340-011-0360
Collecting Fees
(1) Method: Payment may be made in the form of cash, check, or money order. Make checks payable to "Department of Environmental Quality."
(2) Billing: Requestors wishing to be billed may make such arrangements at the time of record request. Purchase orders will only be accepted for orders $10.00 or more.
(3) Receipts: A receipt may be given, upon request, for charges incurred.
(4) Reasonable costs associated with responding to a request to review or copy a record not specifically addressed by these rules may be assessed including the actual costs for the Department to have another person make copies of the records.
(5) Prepayment of Copy Costs: Depending on the volume of the records requested, the difficulty in determining whether any of the records are exempt from disclosure, and the necessity of consulting with legal counsel, the Department may preliminarily estimate the charges for responding to a record request and require prepayment of the estimated charges. If the actual charges are less than the prepayment, any overpayment will be refunded to the requestor.

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020
Stats. Implemented: ORS 192.440
Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00

340-011-0370
Certification of Copies of Records
Certification of both hard and electronic copies of records will be provided. The Department will only certify that on the date copied, the copy was a true and correct copy of the original record. The Department cannot certify as to any subsequent changes or manipulation of the record.
Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020
Stats. Implemented: ORS 192.440
Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00

340-011-0380
Fee Waivers and Reductions
(1) Ordinarily there will be no charge for one copy of a public record:
(a) When the material requested is currently being distributed as part of the public participation process such as a news release or public notice.
(b) When the material requested has been distributed through mass mailing and is readily available to the Department at the time of request.
(c) When the records request is made by a local, state, or federal public/governmental entity or a representative of a public/governmental entity acting in a public function or capacity. Even if a person qualifies under this subsection, the Department may still charge for either record review or copying based on the following factors:
(A) Any financial hardship on the Department;
(B) The extent of time, expense and interference with the Department's regular business;
(C) The volume of the records requested; or
(D) The necessity to segregate exempt from non-exempt materials.
(2) Public Interest Annual Fee Waivers:
(a) An approved annual fee waiver allows the requestor to either review or obtain one copy of a requested record at no charge. Fee waivers are effective for a one year period..
(b) A person including members of the news media and non-profit organizations may be entitled to an annual fee waiver provided that a Fee Waiver Form is completed and approved by the Department. The form must identify the person's specific ability to disseminate information of the kind maintained by the Department to the general public and that such information is generally in the interest of and benefit to the public within the meaning of the Public Records Law. Additional information may be requested by the Department prior to granting any fee waiver.
(c) Even if a person has a fee waiver, the Department may charge for either record review or copying based on the following factors:
(A) Any financial hardship on the Department;
(B) The extent of time, expense and interference with the Department's regular business;
(C) The volume of the records requested;
(D) The necessity to segregate exempt from non-exempt materials; and
(E) The extent to which the record request does not further the public interest or the particular needs of the requestor.
(3) Case-by-Case Waivers or Reductions: A person that does not request, or is not approved for an annual waiver, may request a waiver or a reduction of record review or reproduction costs on a case-by-case basis.

Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020
Stats. Implemented: ORS 192.440
Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00

340-011-0390
Exempt Records
All records held by the Department are public records unless exempt from disclosure under ORS chapter 192 or other applicable law. If the Department determines that all or part of a requested public record is exempt from disclosure, the Department will notify the requestor and the reasons why the Department considers the record exempt.
Stat. Auth.: ORS 192.410 - ORS 192.505 & ORS 468.020
Stats. Implemented: ORS 192.501 & ORS 192.502
Hist.: DEQ 23-1994, f. & cert. ef. 10-21-94; DEQ 9-2000, f. & cert. ef. 7-21-00

Contested Cases

340-011-0500
Contested Case Proceedings Generally
(1) Except as otherwise provided in OAR 340, division 011, contested cases will be governed by the Rules of the Office of Administrative Hearings. The term "agency" generally will be interpreted to mean "Department". The term "decision maker" generally will be interpreted to mean "Commission." The term "party" generally will be interpreted to mean "participant."
(2) In computing any period of time prescribed or allowed by this Division, the day of the act or event from which the designated period of time begins to run will not be included. The last day of the time period is included, unless it is a Saturday or a legal holiday (including Sunday), in which event the time period runs until the end of the next day that is not a Saturday or a legal holiday.
Stat. Auth.: ORS 183.341 & ORS 468.020
Stats. Implemented: ORS 183.341
Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0098 by DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0505
Powers of the Director
The director, on behalf of the Commission, may execute
(1) Any written order which has been consented to in writing by the participants;
(2) Formal enforcement actions;
(3) Orders upon default; and
(4) Any other final order implementing any action taken by the Commission on any matter.
Stat. Auth.: ORS 183.335 and ORS 468.020
Stats. Implemented: ORS 468.045 and 468.130
Hist.: DEQ 122, f. & ef. 9-13-76; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 360-011-0136 by DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0510
Agency Representation by Environmental Law Specialist
(1) Environmental Law Specialists, and other department personnel as approved by the director, are authorized to appear on behalf of the department and commission in contested case hearings

involving formal enforcement actions issued under OAR 340, division 012, and revocation, modification, or denial of licenses, permits, and certifications.
(2) Environmental Law Specialists or other approved personnel may not present legal argument as defined under OAR 137-003-0545 on behalf of the department or commission in contested case hearings.
(3) When the department determines it is necessary to consult with the Attorney General's office, an administrative law judge will provide a reasonable period of time for an agency representative to consult with the Attorney General's office and to obtain either written or oral legal argument, if necessary.
Stat. Auth.: ORS 183.341, 183.452 & 468.020
Stats. Implemented: ORS 183.452
Hist.: DEQ 16-1991, f. & cert. ef. 9-30-91; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0103 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08

340-011-0515
Authorized Representative of Respondent other than a Natural Person in a Contested Case Hearing
A corporation, partnership, limited liability company, unincorporated association, trust and government body may be represented by either an attorney or an authorized representative in a contested case hearing before an administrative law judge or the commission to the extent allowed by OAR 137-003-0555.
Stat. Auth.: ORS 183.341 & 468.020
Stats. Implemented: ORS 183.457
Hist.: DEQ 6-2002(Temp), f. & cert. ef. 4-24-02, thru 10-21-02; DEQ 10-2002, f. & cert. ef. 10-8-02; Renumbered from 340-011-0106 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08

340-011-0520
Liability for the Acts of a Respondent's Employees
A respondent is legally responsible for not only its direct acts but also the acts of its employee when the employee is acting within the scope of the employment relationship, regardless of whether the respondent expressly authorizes the act in question. The mental state ("R" factor under OAR 340-012-0045) of an employee can be imputed to the employer. Nothing in this rule prevents the department from issuing a formal enforcement action to an employee for violations occurring during the scope of the employee's employment.
Stat. Auth.: ORS 183.341 & ORS 468.020
Stat. Implemented: ORS 468.005, 468.130 & 468.140
Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0525
Service of Documents
(1) Service of a formal enforcement action or other document by the department or commission can be made either personally, by certified mail or by regular mail. Service is perfected when received by the respondent, if by personal service, or when mailed, if sent by mail. Service may be made upon:
(a) The respondent;
(b) Any other person designated by law as competent to receive service of a summons or notice for the respondent; or
(c) The respondent's attorney or other authorized representative.

(2) A respondent holding a license or permit issued by the department or commission, or who has submitted an application for a license or permit, will be conclusively presumed able to be served at the address given in the license or permit application, as it may be amended from time to time.
(3) Service by regular mail may be proven by a certificate executed by the person effecting service.
(4) Regardless of other provisions in this rule, documents sent by the department or commission through the U.S. Postal Service by regular mail to a person's last known address are presumed to have been received, subject to evidence to the contrary.
Stat. Auth.: ORS 183.341 & ORS 468.020
Stats. Implemented: ORS 183.413 & ORS 183.415
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0097 by DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0530
Requests for Hearing
(1) Unless a request for hearing is not required by statute or rule, or the requirement to file a request for hearing is waived in the formal enforcement action, a respondent has 20 calendar days from the date of service of the formal enforcement action in which to file a written request for hearing unless another timeframe is allowed by statute or rule.
(2) The request for hearing must include a written response to the formal enforcement action that admits or denies all factual matters alleged therein, and alleges any and all affirmative defenses and the reasoning in support thereof. Factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. New matters alleged in the request for hearing are denied by the department unless admitted in subsequent stipulation.
(3) An amended request for hearing may be accepted by the department if the department determines that the filing of an amended request will not unduly delay the proceeding or unfairly prejudice the participants. The respondent must provide the department with a written explanation why an amended request for hearing is needed with the amended request for hearing.
(4) A late request for hearing may be accepted by the department if the department determines that the cause for the late request was beyond the reasonable control of the respondent. The respondent must provide the department with a written explanation why the request for hearing was not filed in a timely manner. If the respondent fails to provide the written explanation, the department cannot accept the late request for hearing. The department may require that the explanation be supported by an affidavit.
(5) The filing of a late request for hearing does not stay the effect of any final order.
(6) The department will deny a late request for hearing that is filed more than 60 days after entry of a final order by default. A final order by default is considered entered when the order is signed by the director on behalf of the department or commission.
Stat. Auth.: ORS 183.341 & ORS 468.020
Stats. Implemented: ORS 183.415, 183.464, 183.482 & ORS 183.484
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0107 by DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0535
Final Orders by Default
(1) The department may enter a final order by default on behalf of the commission, based upon a prima facie case made on the record, when respondent defaults as set forth in OAR 137-003-0670(1).

(2) If the respondent has defaulted, the formal enforcement action states that the department's record to date will automatically become the contested case record upon default, and no further evidence is necessary to make a prima facie case of the facts alleged in the formal enforcement action, no contested case hearing will be conducted and the department will issue a final order by default.
(3) If the respondent has defaulted and the department determines that evidence, besides that which is in the department's record to date, is necessary to make a prima facie case of the facts alleged in the formal enforcement action, the department will proceed to a contested case hearing for the purpose of establishing a prima facie case upon which the administrative law judge may issue a proposed order by default.
(4) If more than one respondent is named in the formal enforcement action and at least one respondent defaults as provided in section (1) of this rule, the department will issue a final order by default against the defaulting respondent. An administrative law judge will conduct a contested case hearing, as necessary, for the respondents who did not default.
(5) If the formal enforcement action states that a department or commission order becomes a final order unless a timely request for hearing is filed with the department, the order becomes final on the day after the last day that a timely request for hearing should have been filed. No further order need be served on the respondent.
Stat. Auth.: ORS 183.335 & ORS 468.020
Stat. Impl.: ORS 183.415 & ORS 183.090
Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0540
Consolidation or Bifurcation of Contested Case Hearings
Each and every violation is a separate and distinct violation, and in cases of continuing violations, each day's continuance is a separate and distinct violation. Proceedings for the assessment of multiple civil penalties for multiple violations may, however, be consolidated into a single proceeding or bifurcated into separate proceedings, at the department's discretion. Additionally, the department, at its discretion, may consolidate or bifurcate contested case hearings involving the same fact or set of facts constituting the violation.
Stat. Author ORS 183.341 & ORS 468.020
Stat. Implemented: ORS 183.415
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 21-1992, f. & cert. ef. 8-11-92; Renumbered from 340-012-0035 by DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0545
Burden and Standard of Proof in Contested Case Hearings; Department Interpretation of Rules and Statutory Terms
(1) The participant who asserts a fact or position is the proponent of that fact or position and has the burden of presenting evidence to support that fact or position.
(2) All findings in a proposed or final order must be based on a preponderance of evidence in the record unless another standard is specifically required by statute or rule.
(3) In reviewing the department's interpretation of a department rule as applied in a formal enforcement action, an administrative law judge must follow the department's interpretation if that interpretation is both plausible and reasonably consistent with the wording of the rule and the underlying statutes. The administrative law judge may state, on the record, an alternative interpretation for consideration on appeal.
(4) With the exception of exact terms that do not require interpretation, an administrative law judge shall give the department's interpretation of statutory terms the appropriate deference in light of the department's expertise with the subject matter, the department's experience with the statute, the

department's involvement in the relevant legislative process, and the degree of discretion accorded the department by the legislature.
Stat. Author ORS 183.341 & ORS 468.020
Stat. Implemented: ORS 183.450
Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0550
Discovery
(1) Motions for discovery will only be granted if the motion establishes that:
(a) the participant seeking the information attempted to obtain the information through an informal process. If the participant is seeking information from a public agency, the participant must make a public record request prior to petitioning for discovery; and
(b) the discovery request is reasonably likely to produce information that is generally relevant and necessary to the matters alleged in the formal enforcement action and the request for hearing or is likely to facilitate resolution of the case.
(2) An administrative law judge is not authorized to order depositions or site visits unless the department authorizes the same in writing in the specific case.
Stat. Author ORS 183.341 & ORS 468.020
Stat. Implemented: ORS 183.425, 183.440 & 183.450
Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0555
Subpoenas
(1) Subpoenas for the attendance of witnesses or production of documents at a contested case hearing will be issued in accordance with OAR 137-003-0585.
(2) Copies of the subpoena must be provided to the administrative law judge and all participants at the time of service to the person to whom the subpoena is issued.
(3) Service of a subpoena for the attendance of a witness must be completed by personal service unless the witness has indicated that he is willing to appear and the subpoena is mailed at least 10 days prior to the hearing. Personal service should be effected at least 7 days prior to the hearing.
(4) Service of a subpoena for the production of documents at a contested case hearing may be effected by regular mail provided that it is done sufficiently in advance of the hearing to allow reasonable time to produce the documents.
(5) Service of a subpoena for both the attendance of a witness and production of documents must be completed as provided under section (3) of this rule.
(6) Any witness who appears at a hearing under a subpoena will receive fees and mileage as set forth in ORS 44.415(2). The fees and mileage must be paid by the participant for whom the subpoena was issued and may be paid at either the time of service of the subpoena or at the hearing.
Stat. Author ORS 183.341 & ORS 468.020
Stat. Implemented: ORS 183.425, 183.440 &468.120
Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0560
Public Attendance at Contested Case Hearing
An administrative law judge may close a contested case hearing to the public upon the request of a participant in the contested case hearing.
Stat. Auth.: ORS 183.341 & ORS 468.020
Stats. Implemented: ORS 183.341
Hist.: DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0122 by DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0565
Immediate Review by Agency
Immediate review by the agency is not allowed. (See OAR 137-003-0640)
Stat. Auth.: ORS 183.341 & ORS 468.020
Stats. Implemented: ORS 183.341
Hist.: DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0124 by DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0570
Permissible Scope of Hearing
(1) The scope of a contested case hearing will be limited to those matters that are relevant and material to either proving or disproving the matters alleged in formal enforcement action and request for hearing. Equitable remedies will not be considered by an administrative law judge.
(2) The administrative law judge may not reduce or mitigate a civil penalty below the amount established by the application of the civil penalty formula contained in OAR 340, Division 12.
Stat. Auth.: ORS 183.341 & ORS 468.020
Stats. Implemented: ORS 183.450 & ORS 468.130
Hist.: DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0131 by DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0573
Proposed Orders in Contested Cases
(1) Following the close of the record for a contested case hearing, the administrative law judge will issue a proposed order. The administrative law judge will serve the proposed order on each participant. A proposed contested case order must conform to the requirements of OAR 137-003-0645(3).
(2) Within 15 days after a proposed contested case order is issued, a participant in the contested case hearing may file a motion requesting that the administrative law judge clarify or supplement a proposed order. The motion must specify why the participant believes that the proposed order fails to conform to the requirements of OAR 137-003-0645(3) and recommend changes to the order. The motion must be served on the administrative law judge and all participants in the contested case hearing.
(3) The administrative law judge may grant or deny a motion filed under section (2) of this rule within 15 days. If the motion is granted, the administrative law judge may take the matter under advisement and reissue the proposed order unchanged or may issue an amended proposed order. If the administrative law judge fails to act on the motion within 15 days, the motion is deemed denied by operation of law.
(4) The filing of a timely motion for clarification under section (2) of this rule tolls the period for filing a Petition for Commission Review of the proposed contested case order under OAR 340-011-0575. Tolling of the period begins on the day the motion is served on the administrative law judge and ends on the day the motion is denied, deemed denied by operation of law, or the proposed order is reissued without changes. If the administrative law judge issues an amended proposed order, the amended order will be treated as a new proposed order for purpose of the filling a timely Petition for Commission Review under 340-011-0575.
(5) The motion for clarification authorized by this rule is intended to alter the provisions of OAR 137-003-0655 but not to eliminate the authority of the administrative law judge to correct a proposed order in the manner specified in section (2) of that rule.
(6) A motion for clarification and any response to a motion for clarification will be part of the record on appeal.

Stat. Auth.: ORS 468.020, 183.341, 183,452
Stats. Implemented: ORS 468A.020, 468.070, 468.090 - 0140, 183.341, 183.452
Hist.: DEQ 5-2008, f. & cert. ef. 3-20-08

340-011-0575
Review of Proposed Orders in Contested Cases
(1) For purposes of this rule, filing means receipt in the office of the director or other office of the department.
(2) Commencement of Review by the Commission: The proposed order will become final unless a participant or a member of the commission files, with the commission, a Petition for Commission Review within 30 days of service of the proposed order. The timely filing of a Petition is a jurisdictional requirement and cannot be waived. Any participant may file a petition whether or not another participant has filed a petition.
(3) Contents of the Petition for Commission Review. A petition must be in writing and need only state the participant's or a commissioner's intent that the commission review the proposed order. Each petition and subsequent brief must be captioned to indicate the participant filing the document and the type of document (for example: Respondents Exceptions and Brief; Department's Answer to Respondent's Exceptions and Brief).
(4) Procedures on Review:
(a) Exceptions and Brief: Within 30 days from the filing of a petition, the participant(s) filing the petition must file written exceptions and brief. The exceptions must specify those findings and conclusions objected to, and also include proposed alternative findings of fact, conclusions of law, and order with specific references to the parts of the record upon which the participant relies. The brief must include the arguments supporting these alternative findings of fact, conclusions of law and order. Failure to take an exception to a finding or conclusion in the brief, waives the participant's ability to later raise that exception.
(b) Answering Brief: Each participant, except for the participant(s) filing that exceptions and brief, will have 30 days from the date of filing of the exceptions and brief under subsection (5)(a), in which to file an answering brief.
(c) Reply Brief: If an answering brief is filed, the participant(s) who filed a petition will have 20 days from the date of filing of the answering brief under subsection (5)(b), in which to file a reply brief.
(d) Briefing on Commission Invoked Review: When one or more members of the commission wish to review the proposed order, and no participant has timely filed a Petition, the chair of the commission will promptly notify the participants of the issue that the commission desires the participants to brief. The participants must limit their briefs to those issues. The chair of the commission will also establish the schedule for filing of briefs. When the commission wishes to review the proposed order and a participant also requested review, briefing will follow the schedule set forth in subsections (a), (b), and (c) of this section.
(e) Extensions: The commission or director may extend any of the time limits contained in section (5) of this rule. Each extension request must be in writing and filed with the commission before the expiration of the time limit. Any request for an extension may be granted or denied in whole or in part.
(f) Dismissal: The commission may dismiss any petition, upon motion of any participant or on its own motion, if the participant(s) seeking review fails to timely file the exceptions or brief required under subsection (5)(a) of this rule. A motion to dismiss made by a participant must be filed within 45 days after the filing of the Petition. At the time of dismissal, the commission will also enter a final order upholding the proposed order.
(g) Oral Argument: Following the expiration of the time allowed the participants to present exceptions and briefs, the matter will be scheduled for oral argument before the commission.

(5) Additional Evidence: A request to present additional evidence must be submitted by motion and must be accompanied by a statement showing good cause for the failure to present the evidence to the administrative law judge. The motion must accompany the brief filed under subsection (5)(a) or (b) of this rule. If the commission grants the motion or decides on its own motion that additional evidence is necessary, the matter will be remanded to an administrative law judge for further proceedings.
(6) Scope of Review: The commission may substitute its judgment for that of the administrative law judge in making any particular finding of fact, conclusion of law, or order except as limited by OAR 137-003-0655 and 137-003-0665.
(7) Service of documents on other participants: All documents required to be filed with the commission under this rule must also be served upon each participant in the contested case hearing. Service can be completed by personal service, certified mail or regular mail.
Stat. Auth.: ORS 183.341 & 468.020
Stats. Implemented: ORS 183.460, 183.464 & 183.470
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 115, f. & ef. 7-6-76; DEQ 25-1979, f. & ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0132 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08

340-011-0580
Petitions for Reconsideration or Rehearing
(1) A participant is not required to seek either reconsideration or rehearing of a final order prior to seeking judicial review.
(2) Any petition for reconsideration or rehearing must be received by the department within 60 days of service of the final order. Unless specifically set forth in this rule, the procedures for petitions for reconsideration or rehearing are those in OAR 137-003-0675.
(3) A petition for reconsideration or rehearing does not stay the effect of the final order.
(4) The director, on behalf of the commission, shall issue orders granting or denying petitions for reconsideration and rehearing.
Stat. Auth.: ORS 183.341 and 468.020
Stats. Implemented: ORS 183.480 and ORS 183.482
Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0585
Petitions for a Stay of the Effect of a Final Order
(1) A petition to stay the effect of any final order must be received by the department within 60 days of service of the final order. Unless specifically set forth in this rule, the procedures for petitions for a stay are those in OAR 137-003-0690 through 0700.
(2) If a participant submits a petition for reconsideration or rehearing or a late request for hearing, the petition for a stay must accompany that petition.
(3) A petition for a stay must contain all the elements set forth in OAR 137-003-0690 and be served upon all participants as set forth in 137-003-0690(4).
(4) Any participant may seek to intervene in the stay proceeding as set forth in OAR 137-003-0695 by filing a response to the petition for a stay with the department.
(5) The director, on behalf of the commission, shall issue an order granting or denying the petition for a stay within 30 days of receipt of the petition.
Stat. Auth.: ORS 183.341 & 468.020
Stats. Implemented: ORS 183.480 & 183.482
Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0605
Miscellaneous Provisions
Delegation of Authority to the Director of Department of Environmental Quality -- Responding to Claims Under ORS 197.352. The director shall have the authority to carry out the responsibilities and exercise the authorities of the Commission and the Department in responding to claims under ORS 197.352 (2004 Ballot Measure 37), including:
(1) Review of claims under OAR 125-145-0100;
(2) Denial of claims under OAR 125-145-0100; and
(3) Approval of claims under OAR 125-145-0100, except that the Director may only approve a claim by not applying the statute or rule that is the basis of the claim unless the Legislative Assembly has apportioned funds for payment of claims under Chapter 1, Oregon Laws 2005.
Stat. Auth.: ORS 468.020, 197.352
Stats. Implemented: ORS 468.020 & 197.352
Hist.: DEQ 5-2006, f. & cert. ef. 5-12-06

DIVISION 212

STATIONARY SOURCE TESTING AND MONITORING

Sampling, Testing and Measurement

340-212-0120
Program
(1) As part of its coordinated program of air quality control and preventing and abating air pollution, the Department may:
(a) Require the owner or operator of a stationary source to determine the type, quantity, quality, and duration of the emissions from any air contamination source;
(b) Require full reporting in writing of all test procedures and signed by the person or persons responsible for conducting the tests;
(c) Require continuous monitoring of specified air contaminant emissions or parameters and periodic regular reporting of the results of such monitoring.
(2) The Department may require an owner or operator of a source to provide emission testing facilities as follows:
(a) Sampling ports, safe sampling platforms, and access to sampling platforms adequate for test methods applicable to such source; and
(b) Utilities for sampling and testing equipment.
(3) Testing must be conducted in accordance with the Department's **Source Sampling Manual (January 1992)**, the Department's **Continuous Monitoring Manual (January 1992)**, or an applicable EPA Reference Method unless the Department, if allowed under applicable federal requirements:
(a) Specifies or approves minor changes in methodology in specific cases;
(b) Approves the use of an equivalent method or alternative method that will provide adequate results;
(c) Waives the testing requirement because the owner or operator has satisfied the Department that the affected facility is in compliance with applicable requirements; or
(d) Approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors.
[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]
[Publications: The publication(s) referenced in this rule is available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A
Hist.: DEQ 15, f. 6-12-70, ef. 9-1-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020 0035; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1100; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

DIVISION 214

STATIONARY SOURCE REPORTING REQUIREMENTS

Reporting

340-214-0110
Request for Information
All stationary sources must provide in a reasonably timely manner any and all information that the Department reasonably requires for the purpose of regulating stationary sources. Such information may be required on a one-time, periodic, or continuous basis and may include, but is not limited to, information necessary to:
(1) Issue a permit and ascertain compliance or noncompliance with the permit terms and conditions;
(2) Ascertain applicability of any requirement;
(3) Ascertain compliance or noncompliance with any applicable requirement; and
(4) Incorporate monitoring, recordkeeping, reporting, and compliance certification requirements into a permit.
NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.
Stat. Auth.: ORS 468A
Stats. Implemented: ORS 468 & 468A
Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0300; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-214-0114
Records; Maintaining and Reporting
(1) When notified by the Department, any person owning or operating a source within the state must keep and maintain written records of the nature, type, and amounts of emissions from such source and other information the Department may require in order to determine whether the source is in compliance with applicable emission rules, limitations, or control measures.
(2) The records must be prepared in the form of a report and submitted to the Department on an annual, semi-annual, or more frequent basis, as requested in writing by the Department. Submittals must be filed at the end of the first full period after the Department's notification to such persons owning or operating a stationary air contaminant source of these recordkeeping requirements. Unless otherwise required by rule or permit, semi-annual periods are January 1 to June 30, and July 1 to December 31. A more frequent basis for reporting may be required due to noncompliance or if necessary to protect human health or the environment.
(3) The required reports must be completed on forms approved by the Department and submitted within 30 days after the end of the reporting period, unless otherwise authorized by permit.
(4) All reports and certifications submitted to the Department under Divisions 200 to 264 must accurately reflect the monitoring, record keeping and other documentation held or performed by the owner or operator.
NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A
Stats. Implemented: ORS 468 & 468A
Hist.: DEQ 44(Temp), f. & ef. 5-5-72; DEQ 48, f. 9-20-72, ef. 10-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0046; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1140; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01, Renumbered from 340-212-0160

340-214-0120
Enforcement
Notwithstanding any other provisions contained in any applicable requirement, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such applicable requirements.
NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.
Stat. Auth.: ORS 468.035
Stats. Implemented: ORS 468.100
Hist.: DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-0310

Exhibit C

Draft MOA

Hospital/Medical/Infectious Waste Incinerators

Federal Plan Delegation

Memorandum of Agreement

Between
Oregon Department of Environmental Quality and
The United States Environmental Protection Agency, Region 10

I. GENERAL

A. This Memorandum of Agreement defines policies, responsibilities, and procedures pursuant to 40 CFR Part 62 Subpart HHH of Chapter I of Title 40 of the Code of Federal Regulations, by which the hospital/medical/infectious waste incinerators Federal Plan Requirements for hospital/medical/infectious waste incinerators will be administered by both the Oregon Department of Environmental Quality and the United States Environmental Protection Agency. Such agreement will be maintained consistent with the Clean Air Act and its regulations. The provisions of this MOA include the terms, conditions, and the effective date of the delegation of the Federal Plan Requirements for hospital/medical/infectious waste incinerators. This MOA shall serve as a mechanism for the transfer of authority to the State. The delegation of the Federal Plan Requirements to the State is designed to be in effect until there are no hospital/medical/infectious waste incinerators within the jurisdiction of the Federal Plan Requirements in Oregon, EPA publishes an approval of a State Plan that DEQ has submitted, or EPA withdraws delegation of the Federal Plan according to the provisions of this MOA.

B. This agreement is entered into by DEQ and EPA. In a letter dated May xx, 2013, Director Dick Pedersen of DEQ requested from EPA delegation of authority for DEQ to implement and enforce the Federal Plan Requirements. The geographic area covered by this MOA is the State of Oregon excepting Tribal Lands.

C. The EPA shall have the authority to revoke all or part of this delegation if EPA determines that Oregon has failed to properly implement or enforce the Federal Plan Requirements for hospital/medical/infectious waste incinerators.

D. The delegation of the Federal Plan to Oregon shall become effective upon signature by both DEQ and EPA.

E. This MOA may be modified only after mutual consent of both parties for any purpose. Any revisions or modifications to this MOA must be in writing and must be signed by both DEQ and EPA.

II. DELEGATION OF AUTHORITIES

A. By means of this MOA, EPA delegates to DEQ the authority to implement and enforce the Federal Plan Requirements. However, EPA also retains authority to implement and enforce the Federal Plan Requirements.

B. These authorities are additionally delegated to DEQ:

1. Authority to approve changes in the testing sequences of waste incinerator units.
2. Authority to approve requests of alternate testing schedules resulting from unforeseen circumstances.
3. Authority to approve an alternate records format.
4. Authority to approve changes to the semiannual or annual reporting dates.

C. These authorities are retained by EPA:

1. Authority to establish site-specific operating parameters pursuant to 40 CFR 62.14453(b).
2. Authority to approve alternative methods of demonstrating compliance under 40 CFR 60.8, pursuant to 40 CFR 62.14495(b).
3. Authority to approve alternate opacity standards, pursuant to 40 CFR 60.11.
4. Authority to approve alternatives to test methods, pursuant to 40 CFR 62.14495(b) and 40 CFR 60.8.
5. Authority to approve alternatives to monitoring, pursuant to 40 CFR 60.13.

III. PROGRAM IMPLEMENTATION

A. The DEQ agrees to do the following:

1. Enforce the Federal Plan Requirements in accordance with the provisions of 40 CFR Part 62 Subpart HHH, "Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or before December 1, 2008" published on May 13, 2013.
2. Submit copies of any air related permits for affected facilities to EPA.
3. Ensure affected Oregon facilities comply with the "operator certification requirements" and "operator training requirements" sections of the Federal Plan.
4. Administer and oversee compliance reporting and record keeping requirements.
5. Administer and oversee performance testing and monitoring requirements.
6. Inspect all affected Hospital/Medical/Infectious Waste Incinerators at least once every five years.
7. Perform follow-up inspections or review of facility records to insure correction of violations discovered during routine inspections.
8. Update the Federal Plan Requirements and compliance monitoring and enforcement program in collaboration with EPA, as needed.

B. EPA agrees to do the following:

1. Provide technical support and assistance, and training opportunities for interpretation of national regulations, development of technology-based requirements, automated transmission of data to EPA databases, and other areas as requested by DEQ.
2. Make reasonable efforts to communicate to DEQ when additional legal, technical, and financial resources may be necessary to implement new section 111(d) requirements as they become applicable.
3. Expeditiously review and appropriately respond to all information submitted by DEQ.

4. Take final action on any substantial modification to this delegation agreement submitted by DEQ or initiated by EPA. Provide for final action in the Federal Register within 180 days of the submission/initiation of delegation agreement modification.

C. DEQ and EPA agree:

1. EPA will assess DEQ's administration of the Federal Plan Requirements on a continuing basis for consistency with 40 CFR Part 62 Subpart HHH. This assessment will be accomplished by EPA review of information submitted by DEQ, permit overview, and compliance and enforcement overview.
2. The EPA will consider written comments that are received from regulated persons, the public, and Federal, State, and local agencies in assessing the Oregon delegation of the Federal Plan Requirements. Copies of any comments received from such sources will be provided to the DEQ within seven (7) working days of receipt.
3. The EPA may audit DEQ by examining the files and documents related to affected facilities.
4. If EPA determines that DEQ is not adequately administering or enforcing the Federal Plan Requirements, EPA will notify DEQ of the determination as soon as possible and provide the reasons for the determination. DEQ and EPA will then determine the process and time frame for correcting the deficiencies in an expeditious manner.
5. DEQ agrees to allow EPA access to all files and other requested information deemed necessary by EPA to ensure management of the delegated Federal Plan Requirements consistent with EPA policy.
6. DEQ and EPA agree to the following procedures with respect to confidentiality of information.
    a. Except for attorney client communications, any information obtained or used in the administration of the Federal Plan shall be available to EPA or DEQ upon request without restriction. If the information has been submitted to DEQ under a claim of confidentiality, DEQ must submit that claim to EPA when providing the information.
    b. If any information is submitted to DEQ under a claim of confidentiality and Oregon statutes prohibit submitting that information to EPA, DEQ will require the source to submit the information directly to EPA.
    c. Any information obtained from DEQ or from a source subject to a claim of confidentiality will be treated by EPA in accordance with the regulations in 40 CFR Part 2.

IV. Signatures

for the United States Environmental Protection Agency, Region 10
By: Date:

Regional Administrator

for the State of Oregon Department of Environmental Quality
By: Date:

Director

Other Exhibits to be added after the close of the comment period:

Exhibit D: 30-Day Notification

Exhibit E: Certification of Hearings

Exhibit F: Public Comments and Responses